



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2004

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-2939

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199250.

The City of Houston (the "city") received a request for the city's current contract net unit price for Sodium Hypochlorite as listed in Bid Invitation No. SC-R-6810-013-20002-RA, Item No. 1, Description 6810-0908107-00. You indicate that the city does not object to the release of the requested information; however, you state that the request may implicate the proprietary interests of a third party. Thus you state, and provide documentation showing, that you notified ALTIVIA Corporation ("ALTIVIA") of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have reviewed the submitted information.

ALTIVIA has submitted comments to this office in which the company contends that the information at issue is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information that other law makes confidential. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality).

Although ALTIVIA states that release of the information at issue would reveal proprietary financial information about ALTIVIA's raw material costs, ALTIVIA has not directed our attention to any law under which such information is confidential. Moreover, we are not

aware of any statute or other source of law applicable to such information that would make the information confidential by law for purposes of section 552.101 of the Government Code. *See* Open Records Decision No 478 (1987) (statutory confidentiality requires express language making certain information confidential). We find ALTIVIA has not adequately demonstrated that the information at issue is confidential by law and excepted from disclosure under section 552.101.

As noted, ALTIVIA indicates that the information at issue consists of proprietary financial information of the company. Section 552.110 of the Government Code protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b). ALTIVIA does not contend that the information at issue consists of trade secrets. Thus, we find that the information at issue is not excepted from disclosure under section 552.110(a) of the Government Code. *See* Open Records Decision Nos. 552 (1990) (information subject to Public Information Act is protected from disclosure as trade secret if a prima facie case for exemption is made and no argument is submitted that rebuts claim as a matter of law), 402 (1983) (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999). Because ALTIVIA has not made a specific factual or evidentiary showing that release of the information would likely result in substantial competitive harm to the company, we determine that the information is not excepted from disclosure under section 552.110(b) of the Government Code. *See* Open Records Decision Nos. 661 (1999) (business enterprise must show by specific factual evidence that release of information would cause substantial competitive harm), 541 (1990) (general terms of contract with governmental body usually not excepted from disclosure); *cf.* Open Records Decision No. 514 (1988) (public has an interest in knowing prices charged by government contractor). We therefore conclude the city must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 199250

Enc: Submitted documents

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